MINUTES
of the
SECOND MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE

July 16-17, 2007
Clovis Civic Center
Clovis

The second meeting of the Water and Natural Resources Committee was called to order on July 16, 2007 at 10:10 a.m. by Senator Phil A. Griego, chair, at the Clovis Civic Center in Clovis.

Present
Sen. Phil A. Griego, Chair
Rep. Andy Nunez, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Rep. Larry A. Larranaga
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart
Rep. Don L. Tripp

Absent
Rep. Elias Barela
Sen. Sue Wilson Beffort
Sen. Dede Feldman
Rep. Dona G. Irwin
Sen. Cynthia Nava

Advisory Members
Sen. Rod Adair
Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. John C. Ryan
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Sen. Carlos R. Cisneros
Sen. Timothy Z. Jennings
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez
Rep. Peter Wirth
Rep. Eric A. Youngberg

Guests

The guest list is in the original meeting file.

Staff

Gordon Meeks
Jon Boller
Jeret Fleetwood

Monday, July 16

Senator Griego began by having members of the committee introduce themselves to the audience. Senator Harden and Representative Crook welcomed committee members to Clovis and thanked them for holding a meeting there.

Mayor David Lansford also welcomed the committee to Clovis and thanked it for coming. He noted that Clovis is growing and thanked the legislature for its help in promoting economic development in eastern New Mexico.

Next, Senator Griego informed the committee that the Legislative Council had approved the committee's work plan, which included a subcommittee to discuss adjudications, and named the following members to the Subcommittee on Adjudications:

Sen. Mary Kay Papen, Chair	Sen. Cisco McSorley
Rep. Ray Begaye	Rep. Kathy A. McCoy
Rep. Joseph Cervantes	Sen. John C. Ryan
Rep. Candy Spence Ezzell	Rep. Peter Wirth
Rep. Larry A. Larranaga	

Senator Griego explained that the subcommittee will be meeting for the first time after the regular committee adjourns on July 17.

Financing Major Water Development Projects

Bill Sisneros, New Mexico Finance Authority (NMFA) director, provided the committee with an overview of how the NMFA operates. He explained that the NMFA was created to work with state, local and Native American governments to help build infrastructure with low-cost financing for projects. Mr. Sisneros noted that bonding and loan financing structures are an attractive alternative to "pay-as-you-go" financing for local governments whose finances are already stretched thin. He also pointed out that the NMFA has financed about $2 billion in infrastructure and equipment projects since its inception.

Mr. Sisneros went on to discuss the various ways the NMFA helps communities fund their projects. He explained the differences among pay-as-you-go funding, annual funding from state or federal appropriations, annual funding from other revenues and bond financing. He went on to explain how various types of bonds work, noting the difference between revenue bonds and general obligation bonds.

Finally, Mr. Sisneros discussed the NMFA's financing of water projects, noting that the Public Project Revolving Fund has the capacity to fund water projects of all sizes. He also pointed out that the federally funded drinking water program, the Water Trust Board and the Local Government Planning Fund could all be used for certain types of water projects.

Rick Martinez, deputy secretary of the Department of Finance and Administration (DFA), provided the committee with a proposal to create a single governmental entity for all water and wastewater infrastructure requests, or what he described as a "one-stop shop" for water project financing needs. He explained that such an entity would include several state agencies and would feature a uniform application to be reviewed by the New Mexico Department of Environment (NMED), DFA and the NMFA for budget capacity, debt analysis and rate analysis.

Mr. Martinez went on to explain that the proposed entity would help provide capacity development assistance to water and wastewater systems.

Mr. Martinez then discussed the proposed criteria for water infrastructure projects, which include a financial plan, a fully allocated rate structure, asset management and maintenance plans, adequate governance (such as a board), operational planning and conformance with Office of the State Engineer (OSE) regulations. He also emphasized that projects receiving funding would have to be fully funded and planned.

Questions and comments included:

- negative feedback on proposed "one-stop shopping" for water projects as a consolidation of governmental power;
- options for project financing for small communities with no real revenue stream;
- whether Water Trust Fund money can be used for watershed restoration;
- how projects reviewed by the proposed entity would still have to be approved by the Water Trust Board, where there is broad representation of water stakeholders;
- the Ruidoso Downs wastewater project;
- Albuquerque's use of the NMFA to fund projects;
- which local government revenue streams are dedicated to paying off water projects first;
- whether large projects can be bonded when federal funding is involved;
- whether the proposed entity would mean a new cabinet secretary;
- prioritization of large and small water projects; and
- the amount of money in the Water Trust Fund.

Interstate Stream Commission Management of Pecos River Retired Farmland

Estevan Lopez, director of the Interstate Stream Commission (ISC), provided the committee with an overview on the efforts of the ISC to manage land along the Pecos River that has had its water rights retired as part of the Pecos River settlement. He began by explaining that the Pecos River settlement requires New Mexico to deliver a certain amount of water to Texas each year, and to ensure that enough water is delivered, the State of New Mexico purchased land along the river and retired its water rights. Mr. Lopez went on to explain that several issues have

arisen on the land purchased by the state, pointing out that the land now lies either bare or infested with extremely high weeds. He also noted that Representative Ezzell had introduced a bill during the 2007 session that would have allowed the state to retire water rights on a parcel of land without actually buying and managing the land, which would have helped address some of the issues with the land. However, he indicated that the bill had been passed by the legislature but pocket vetoed by the governor.

Mr. Lopez went on to discuss management of the purchased land by the ISC. He began by showing the committee the location of the various parcels of land being managed by the ISC and discussed a program implemented by the ISC to help the land progress from annual weed population to perennial native plant communities. Mr. Lopez noted that the goals of the program are to minimize adverse impacts of the land on adjacent landowners, to benefit local economies in the Pecos River Basin and to promote the general public welfare of the basin. He then outlined the process involved in the land management process, explaining that after the land is purchased, a baseline evaluation is conducted, a lease is offered to the previous landowner and a property management plan is negotiated and enforced. He also noted that it would take about 10 years for the land to complete its succession from farmland to perennial, native plant communities.

Finally, Mr. Lopez pointed out that the lands are still subject to oil and gas development. He also discussed the cost per acre of managing the purchased lands, indicating that it will cost about $328,400 per year for the ISC to manage the 8,108 acres currently owned.

Questions and comments included:

- terms of the Pecos River settlement;
- whether water conserved by New Mexico through salt cedar removal programs has to be delivered to Texas as part of the Pecos River Compact;
- the effectiveness of computer modeling of the Pecos River and the aquifer underneath at helping to understand the effects of various land management strategies;
- impediments to buying land along the Pecos River;
- whether leases on purchased land generate any income for the state;
- the length of leases with previous landowners;
- the amount of money spent on the lawsuit with Texas over the Pecos River, purchasing lands and now managing those lands;
- the amount of maintenance required after 10 years; and
- how purchased land is evaluated to determine its lease value.

Regional Water Planning Process Status Report

Angela Bordegaray of the ISC provided the committee with an update regarding regional water planning in the state. She began by outlining the water planning regions in New Mexico and summarizing the ISC's regional water planning program. Ms. Bordegaray noted that the program was actually started in 1987, but initially was not well funded. She explained that funding levels were increased from 1999-2006, which led to the completion of most of the regional plans, and indicated that 15 of the 16 regional plans had been accepted by the ISC. Ms. Bordegaray also emphasized that regional water planning is not to be confused with 40-year water plans or the efforts to regionalize drinking water systems.

Next, Ms. Bordegaray explained that water plans are designed to answer a set of basic questions:

- how much water is available;
- how much water will be needed;
- will available water supply meet projected demand; and
- what strategies can be implemented so that demand can be met?

She also detailed the water plan development process, explaining that plans follow the ISC Regional Water Planning Handbook template.

Finally, Ms. Bordegaray discussed the involvement of the public and regional water stakeholders in regional water plan development. She also explained how the regional plans fit into the state water plan as a whole.

Questions and comments included:

- involvement of New Mexico State University (NMSU) in land management relative to regional water plans;
- whether regional water plans dovetail with water infrastructure needs of communities;
- the relationship between infrastructure planning and water planning;
- that the Taos region plan is the only one not yet approved by the ISC;
- water planning issues on the middle Rio Grande; and
- how regional water plans do not address water rights issues.

Eastern New Mexico Rural Water System Status

Scott Verhines, program manager for the Eastern New Mexico Rural Water System, provided the committee with an update on the water system's status. He began by providing the committee with a brief background of the water system, explaining that its concept was developed to ensure that eastern New Mexico would be assured an adequate supply of water in the face of continued development in the area and a declining aquifer that currently supplies much of the region with its water. Mr. Verhines went on to provide the committee with an overview of the project itself, explaining that it would take water from the Ute Reservoir on the Canadian River, treat it to improve its quality and transport it via pipeline to the project's member communities. He went on to indicate that the total cost of the project would be about $436 million, which would be shared by the federal government, the State of New Mexico and local communities.

Finally, Mr. Verhines discussed the upcoming goals for the project. He indicated that federal legislation authorizing the project was introduced in fall 2006 and would be reintroduced in 2007 or early 2008. Mr. Verhines also noted that a Senate field hearing is tentatively scheduled for August 14, 2007 in Clovis. He also explained that an environmental impact statement is anticipated in the near future.

Questions and comments included:

- ownership of water in Ute Reservoir;
- project funding will be 75% federal, 15% state and 10% local;
- whether Hobbs used to be a project member;
- date of first right of refusal;
- whether Cannon Air Force Base's new mission will help leverage more federal money for the project; and
- the size of the pipeline that will transport water from Ute Reservoir.

Estancia Basin Regional Water Planning

John Jones, secretary of the Estancia Basin Water Planning Committee (EBWPC), provided the committee with a brief overview and summary of the efforts of the EBWPC. He began by thanking the committee for the support and funding it has provided throughout the regional water planning process. Next, Mr. Jones provided the committee with a summary of the EBWPC's work, explaining that efforts to begin water planning began in the 1990s. He noted that, after a large amount of public input, the Estancia Basin's plan was finalized in 1999 and went on to be the first one accepted by the ISC.

Mr. Jones then detailed the successes associated with the Estancia Basin water plan, which he said include a memorandum of understanding between the four soil and water conservation districts in the basin regarding watershed health, a partnership between the committee and the USGS and Sandia National Laboratories on data collection and the EBWPC's ability to maintain its position as an advisory group providing a balanced view on water issues.

Mr. Jones went on to note that while new information about available water resources suggests that the basin's water plan should be updated, its development is still a valuable exercise. He emphasized that even if the regional water plans are developed and never utilized, the process of developing them holds merit and value of its own.

Questions and comments included:

- whether the Estancia Basin's water rights have been fully adjudicated.

Brackish Water Development in New Mexico

Dr. Karl Wood of the Water Resources Research Institute at NMSU provided the committee with testimony regarding water research at NMSU. He explained that NMSU has formed five strategic research areas, or clusters, to try to provide solutions for New Mexico's citizens: bioscience, border issues, information science, aerospace and natural resources. He went on to note that the natural resources cluster includes a water research sub-cluster and listed several water research topics the university is currently working on, which include river salinity, wastewater treatment, surface-ground water interaction and desalination technology.

Dr. Wood went on to discuss several current trends in desalination, noting that there are currently more than 15,000 desalination plants in operation around the world. However, he pointed out that almost all of those desalination plants operate near an ocean, which makes it easier to dispose of the concentrate that is a byproduct of desalination. Dr. Wood indicated that while there is a relatively large supply of brackish water underneath New Mexico, inland desalination of that water presents a number of problems, such as variability of the saline content of the brackish water, energy requirements and concentrate disposal, which Dr. Wood noted would account for half of the cost of a desalination operation.

Dr. Wood went on to note that even though inland desalination presents a number of problems, it still may be developed into a viable technology. He noted that a new, federally funded facility had been constructed just west of Alamogordo to study various desalination technologies. Dr. Wood described the facility and cautioned the committee that New Mexico's water needs would not be completely satisfied by such facilities. He pointed out that additional research will still be necessary, such as a federal aquifer assessment and state initiatives for technologies that can be adapted to New Mexico's small communities, its agricultural and livestock needs and the water produced by oil and gas development. Dr. Wood did emphasize that the facility in Alamogordo provides a great opportunity for New Mexico to piggyback on federal programs to meet specific in-state needs.

Questions and comments included:

- depth of brackish water in New Mexico's aquifers;
- whether desalination technology is a priority in water funding;
- agricultural uses for research performed at the Alamogordo facility;
- whether water produced by methane wells can be converted to usable water;
- need for state money for NMSU to continue its water research;
- desalination of water produced by oil and gas development;
- whether desalination technology can be used to address arsenic levels in water; and
- ways for the legislature to help advance water research besides appropriating money.

Tuesday, July 17

Phreatophyte Removal and Riparian Restoration

Jack Chatfield, project manager of the Canadian River Riparian Restoration Project, began by providing the committee with a brief history of riparian restoration efforts on the Canadian River. He explained that in 2003, the New Mexico Association of Conservation Districts asked the legislature to authorize a salt cedar removal project in northeastern New Mexico, which led to the development of a statewide phreatophyte plan. Mr. Chatfield also pointed out that NMSU has developed a salt cedar monitoring program that is regarded as the best in the United States.

Mr. Chatfield went on to discuss the treatment of salt cedars along the Canadian River. He indicated that over 4,000 acres have been treated with a variety of means, including the use of goats and sowing grass seed, applying herbicides and mechanically clearing. He discussed the effectiveness of each method and provided the committee with photographs showing areas along the river before and after treatment. Mr. Chatfield also noted that some methods require follow-up treatments to address salt cedars that have resprouted.

Questions and comments included:

- reasons for less money being spent on treatment of salt cedars than in previous years;
- whether treatment of salt cedars actually equates to increased river flows;
- origin of salt cedars and Russian olive trees;
- history and purview of soil and water conservation districts;
- effectiveness of herbicides on various phreatophytes;
- issues related to treatment of salt cedars on privately owned land;
- ineffectiveness of fire as a means of controlling the salt cedar population;
- federal funding matches for salt cedar removal money appropriated by the state;
- how salt cedars have channelized New Mexico's rivers by eliminating over-bank flooding, which is beneficial to cottonwood trees;
- salt cedar work in the bosque areas in Albuquerque; and
- similarities and differences between salt cedar removal and habitat restoration.

Levi Sanchez, chair of the Upper Rio Grande Phreatophyte Control Project, also provided the committee with testimony regarding treatment of salt cedars. He explained that this project operates between Belen and Abiquiu, is made up of several communities and is managed by the Upper Rio Grande Steering Committee, a fiscal agent and an experienced project coordinator. Mr. Sanchez also noted that the project faces several unique conditions, such as the vegetation canopy along the river, the large percentage of privately owned land divided into small parcels and the cultural conditions that stem from the fact that 95% of the tribal entities in New Mexico are located in the northern half of the state and many of them are located within the project's boundary.

However, Mr. Sanchez emphasized that, despite the unique conditions present along the upper Rio Grande and the sub-watershed areas that drain into it, the Upper Rio Grande Phreatophyte Control Project complies with all the guidelines and protocols of the state

phreatophyte control plan. He also noted that mechanical treatment has become the preferred method of salt cedar control in the area because the mixture of vegetation makes the area somewhat unsuitable for chemical spraying. Mr. Sanchez did note that no single treatment method is best for all locations.

Finally, Mr. Sanchez requested that the legislature continue to support phreatophyte removal in New Mexico and recommended that funding levels be restored to $5 million per year.

Questions and comments included:

- reasons why aerial herbicide treatments do not suit the upper Rio Grande well;
- whether the federal government helps to defer the cost of salt cedar treatment on Native American land; and
- the average amount of water consumed by salt cedars.

Budgeting and Administering Phreatophyte Removal and Riparian Restoration Statewide

Senator Griego noted that the committee is disappointed when cabinet secretaries are invited to show up and they do not.

Ricardo Gonzales of the New Mexico Department of Agriculture provided the committee with testimony regarding the statewide phreatophyte/watershed management plan. He explained that money for salt cedar treatment from 2002-2005 had been appropriated by the legislature to the soil and water conservation districts, that in 2006 money for salt cedars had been vetoed by the governor and that $500,000 had been appropriated to NMSU and the department of agriculture for implementation of the statewide salt cedar plan in 2007. Mr. Gonzales also provided the committee with an overview of the statewide plan, discussing its history, vision, recommendations and implementation of those recommendations.

Butch Blazer, state forester, provided the committee with testimony regarding the efforts of the State Forestry Division of the Energy, Minerals and Natural Resources Department. He showed the committee a map indicating the location of the various watershed health projects underway in New Mexico and noted the involvement of the soil and water conservation districts throughout the state in helping to conduct watershed restoration projects.

Cindy Padilla of the NMED provided the committee with testimony regarding water quality issues as they relate to salt cedar removal. She noted that the NMED needs to work with local entities on addressing such issues as non-point-source pollutants and total maximum daily loads in New Mexico's waterways.

Ms. Padilla also noted that another method of reducing current impairments to New Mexico's surface waterways is through watershed restoration. She indicated that NMED intends to promote watershed restoration through a forum, planned for three days, to bring all the involved entities together to discuss who is doing what and how it can be improved.

Ms. Padilla went on to note that the NMED is helping to take the lead on watershed restoration because of its experience with the use of federal funds. She explained that river ecosystem restoration funds are available through the federal government and that a process is currently underway to determine how best to use those funds. Ms. Padilla listed habitat restoration, bank lowering and channel widening as possible activities for use of the funds. She also emphasized that salt cedar projects alone would not be considered unless they are part of a larger project.

Debbie Hughes of the New Mexico Soil and Water Conservation District Association explained to the committee that the phreatophyte management plan was put together without much input from the soil and water conservation districts. She also noted that soil and water conservation districts are political subdivisions of the state and, hence, submitted their budgets to the DFA and had them audited.

Questions and comments included:

- whether the NMED, Energy, Minerals and Natural Resources Department and New Mexico Department of Agriculture had specific requests for salt cedar removal in their budgets;
- salt cedar removal in San Juan County;
- whether soil and water conservation districts need increased oversight;
- how state funding for soil and water conservation districts goes through the New Mexico Department of Agriculture;
- how appointments to soil and water conservation districts are made; and
- involvement of the Western Governor's Association in phreatophyte issues.

After a lengthy discussion about the issue of phreatophyte removal and soil and water conservation districts, Senator Griego noted that an entire afternoon of the committee's October meeting would be dedicated to the issue.

On a motion made, seconded and unanimously approved, the minutes of the June 12, 2007 meeting of the committee were adopted as submitted.

On a motion made, seconded and unanimously approved, the committee decided to send a letter to the federal delegation expressing its support for the Eastern New Mexico Rural Water System.

There being no further business, the committee adjourned at 12:30 p.m.

Water Adjudications Subcommittee

Subcommittee members present were:	**Absent were:**
Sen. Mary Kay Papen, Chair	Sen. John C. Ryan
Rep. Ray Begaye	Rep. Peter Wirth
Rep. Joseph Cervantes	
Rep. Candy Spence Ezzell	
Rep. Kathy A. McCoy	
Rep. Larry A. Larranaga	
Sen. Cisco McSorley	

The subcommittee chair began the meeting by asking each member to make a brief statement of interest and expectations from the subcommittee. The members expressed their hope that the subcommittee can:

- assess the progress of water rights adjudications;
- identify the courts' requirements to manage the adjudications;
- identify the best procedures for water adjudications;
- account for the money appropriated for the adjudications;
- recommend a reasonable base budget for adjudications;
- bring a heightened level of priority to water adjudications and increase pressure to expedite and accelerate adjudications;
- prioritize the most critical water adjudications;
- identify reliable funding for long-term water adjudication costs;
- identify the most efficacious division of responsibilities (and budgets) among the various responsible state institutions, i.e., the courts, the OSE, the Attorney General's Office and the Utton Transboundary Center's Joe Stell Ombudsman Program;
- strengthen mediation and community relations programs to encourage water claimants' participation and collaboration and reduce the role of lawyers and adversarial nature of the process;
- increase public disclosure and public education;
- ascertain the history of adjudications relative to the federal role in settlements and foster collaboration between the state and the federal agencies;
- bring some focus on the purpose of water adjudications and their importance;
- find ways to eliminate waste in the process;
- clarify the purpose and nature of water adjudications;
- increase the use of irrigation records in the process and reduce the reliance on and costs of hydrographic surveys;
- increase candor and improve communications;
- improve relationships between the state and Native American water rights owners; and
- provide assistance to small users who cannot afford attorney fees.

Greg Ridgely of the OSE, Celina Jones of the Administrative Office of the Courts (AOC), Brett Woods of the Legislative Finance Committee and Special Master Steve Snyder were present to answer questions of the subcommittee, including:

- the amount of money available from severance tax revenues, or sponge bonds issued against those revenues, for water adjudications;
- the attorney general's opinion regarding the use of money for salaries and operations in water adjudications;
- the original purpose of amendments to the Water Project Fund contained in HB 1110 from the 2005 session;
- use of HB 1110 to displace the general fund baseline budget for adjudications;
- how many water rights can be reasonably adjudicated annually and what budget is needed to accomplish that goal;
- how Native American lands' water is adjudicated or negotiated;
- request to the OSE for an adjudication schedule;
- legislation to mandate an adjudication schedule for the state engineer;
- progress in establishment of water courts or establishment of designated water judges in each district court;
- status of court rules for water adjudications;
- a request for the courts to take control of the process;
- consequences of loss of continuity over time;
- how to improve and enhance the ombudsman program and function;
- direction to the staff for the September agenda to include: Judge Valentine, Special Master Vickie Gabin, Ms. Jones, Mr. Ridgely, Alvin Jones and Fred Hennighausen and the Utton Transboundary Center;
- explanation of water adjudications as an accounting process, unless there is a dispute;
- four areas of potential reform:
    —new procedural rules;
    —enhanced coordination between the OSE and the courts;
    —improvement of ownership tracking over time, such as auto registration (Idaho example); and
    –court reform;
- potential for water rights claimants to play a more active role in the process;
- Rio Chama adjudications as a template and model of how to improve the process;
- alternative criteria for proving water rights;
- action plan:
    1. translate four areas of reform into legislation or court rules;
    2. replicate Rio Chama model; and
    3. increase resources of the Utton Center;
- request for the OSE to suggest improvements at the September 2007 meeting in Ruidoso; and
- direction to staff to invite the Governor's Office to explain the governor's water policy to the committee and his objections to adequate budgeting of water adjudications.

The subcommittee adjourned at 3:15 p.m.